IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.2874 OF 2005

Manubhai Hargovindas Patel ...Petitioner

vs.

State of Maharasthra and others ...Respondents

Mr.M.H.Patel Petitioner-in-person
Mr.A.S.Shitole, A.P.P. for Respondent-State

CORAM: A.S.OKA,J.
DATE : AUGUST 18, 2006.

P.C.:

1. The Petitioner appearing in person is present. The Petitioner filed a private complaint against the Respondent Nos.2 and 3 who are the Police Officers alleging commission of offence punishable under Sections 218 and 219 read with section 120-B of the Indian Penal Code. By exercising the power under section 203 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the said Code of 1973), the complaint was dismissed by the learned Additional Chief Metropolitan Magistrate, Mumbai. The Petitioner challenged the said order by preferring a Revision Application before the Sessions Court. The said Revision Application has been dismissed. The Petitioner has taken exception to these two orders by filing this Writ Petition.

2. The Petitioner appearing in person has invited my attention to the report dated 6th April 2005 submitted by the second Respondent. The said report was submitted by the second Respondent in compliance with order passed by the

learned Magistrate under section 202 of the said Code of 1973 on another private complaint filed by the present Petitioner. The Petitioner submitted that the report was submitted by the second and third Respondent only with the object of saving skin of the accused persons in the earlier complaint filed by him. He invited my attention to the letter dated 20th November 2004 submitted by the 27 persons who are allegedly members of Kingston Palace Co-operative Housing Society Ltd. (proposed). He submitted that the Respondent Nos.2 and 3 have made false statement in the said report and on the basis of the said report a revolver licence which was granted to the Petitioner has been cancelled. Inviting my attention to the impugned order passed by the learned Magistrate, he submitted that the learned Magistrate has committed an error by holding that the Petitioner was required to produce evidence at the stage of passing order under section 204 of the said Code. He submitted that once perusal of the complaint and verification shows that a case for commission of offence complained of was made out, the learned Magistrate was duty bound to issue process.

3. I have considered the submissions. The Petitioner emphasised on the observations made by the learned Magistrate as regards absence of sufficient evidence. Perusal of the Judgment of the learned Magistrate shows that he has considered the averments made in the complaint and has come to the conclusion that prima facie case was not made out for issuing process against the accused persons.

4. At this stage, the Petitioner-in-person pointed out that certain factual aspects have been fictitiously incorporated in the impugned order by the learned Sessions Judge. He has referred to narration of the facts by the learned Sessions Judge in paragraph No.4 of the Judgement.

5. The learned Sessions Judge has noted that the report submitted by the Respondent Nos.2 and 3 was against the Petitioner. The learned Sessions Judge has noted that notwithstanding the said report, the learned Magistrate has taken cognizance of the offence in the earlier private complaint filed by the Petitioner and thus, the Petitioner has not suffered any prejudice because of the said report. The learned Sessions Judge has observed, and in my view rightly, that it cannot be said that the report which was submitted by the Respondent Nos.2 and 3 was false to their knowledge or that they have knowingly submitted the report which is contrary to law. After making investigation, the concerned Officers submitted a report regarding their opinion about the merits of the case made out by the Petitioner in the earlier complaint.

6. No fault can be found with the view taken by the learned Sessions Judge that no prima facie case is made out by the Petitioner of commission of offences under section 218 and 219 read with section 120-B of the Indian Penal Code. There is no merit in the Petition and the same is rejected.

JUDGE